Epic Injunction Compliance Press Briefing

July 2023

CX-0477.1

Epic v Apple Timeline

- **Late 2019:** Epic hatched "Project Liberty" to challenge Apple's 30% commission
- **August 13, 2020:**
  - Epic triggered its "hotfix" to "circumvent" Apple's In-App Purchase System
  - Hours later, Epic sued Apple, seeking a sweeping injunction; Apple countersued for damages
- **May 2021:** The district court held a 16-day bench trial featuring 26 witnesses and 520 exhibits
- **September 2021:** Apple won a resounding victory, with 9 of 10 claims having been decided in Apple's favor
- **April 2023:** The Ninth Circuit upheld that ruling

- As this case has been ongoing for more than 2.5 years, we wanted to briefly recap the history.
- To help remind us all how we got here, Epic began planning this case many years ago—so-called "Project Liberty." Epic worked with lawyers, PR consultants, and formed a front group called the Coalition of App Fairness as part of a coordinated attack against Google and Apple over their commission rates.
- This case began on August 13, 2020. That is, when Epic activated the so-called "hotfix," code it had surreptitiously smuggled into its app in violation of its contract with Apple. At the same time it activated the hotfix, Epic filed its lawsuit and unleashed a coordinated PR blitz.
- We had an extensive trial before a federal judge, Hon. Yvonne Gonzalez Rogers, from May 3-24, 2021, and she issued her decision on September 10, 2021.
- Apple won a resounding victory — the Court found for Apple on 9 of 10 claims brought by Epic.
- In April, 2023, a federal appeals court upheld that ruling.

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Apple Prevailed at Trial

The court found for Apple on 9 of 10 claims brought by Epic, including all antitrust claims

- The Court found that Apple is not a monopolist in any relevant market: "The Court cannot ultimately conclude that Apple is a monopolist under either federal or state antitrust laws"
- The Court found that App Store distribution and IAP provide significant procompetitive benefits for both developers and consumers
- The Court found that App Review enhances the security and privacy of the iOS ecosystem
- The Court found that Apple's agreements with developers are lawful and that Apple is entitled to charge commissions for access to its platform

The district court ordered Apple to revise the guideline on in-app communications under California's Unfair Competition Law (UCL). The Ninth Circuit court affirmed that decision.

- The court found for Apple on every antitrust claim:
  - Apple is not a monopolist.
  - Apple's business model is procompetitive, giving developers and consumers better privacy, security, and an overall higher-quality product.
  - And the court found that Apple's agreements with developers are lawful and that Apple is entitled to charge commissions for access to its platform
- The court did find two provisions in Apple's guidelines were unfair under California law and ordered Apple to stop enforcing those provisions.
  - This concerns the so-called anti-steering claim, which relates to whether one of Apple's guidelines about whether developers could link users to purchasing options (like on their websites) within their apps. The district court found that while that wasn't unlawful under federal antitrust law, it was unfair under California state law. The Ninth Circuit stayed that ruling, signaling merit to Apple's appeal. (Apple had already removed the second guideline as part of the Cameron settlement with 99% of developers). On April 24, 2023, the Ninth Circuit affirmed the district court's decision.

1. Hannah Smith
   July 10, 2023 at 12:04:43 GMT+0000
   Insert quote from the decision if possible.

California UCL Claim

Court issued an injunction enjoining Apple from prohibiting developers in the United States from:

- "(i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and
- (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app."

The court found that Apple is entitled to charge a commission for access to its platform

- This decision allows Apple to use IAP and collect its commission.
- "Even in the absence of IAP, Apple could still charge a commission on developers."

- Specifically, the Court issued an Injunction enjoining Apple from prohibiting in the United States developers from "(i) including in their apps and their metadata buttons, external links, or other calls to action that direct customers to purchasing mechanisms, in addition to In-App Purchasing and (ii) communicating with customers through points of contact obtained voluntarily from customers through account registration within the app."
- The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform.
- Instead, it found that Apple is entitled to charge a commission for access to its platform. The decision allows Apple to use IAP and collect its commission.
- The court said: "Even in the absence of IAP, Apple could still charge a commission on developers."

California UCL Claim

- The court found that Apple is entitled to charge commissions for access to its platform.
  - "[U]nder all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional."
  - "Even in the absence of IAP, Apple could still charge a commission on developers."

The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform.

Instead, it found that "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional."

— And —

"Even in the absence of IAP, Apple could still charge a commission on developers."

App Store Benefits for developers

The court found all App Store developers benefit from:

- Apple's "enormous" investment in "tools and features for iOS," including "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of ... cellphones to allow for more sophisticated apps."
- "Access to Apple's vast consumer base" as well as "the safe environment created by the App Store" which encourages users to "download apps freely and without care."

- This is because all App Store developers — including those who place buttons, links, and calls to action in their apps — benefit from Apple's proprietary technology and tools, intellectual property, and access to its user base.
- The court found that developers benefit from:
  - Apple's "enormous" investment in "tools and features for iOS," including "thousands of developer tools, SDKs, and APIs" and Apple's "constant updating of . . . cellphones to allow for more sophisticated apps."
  - "Access to Apple's vast consumer base" as well as "the safe environment created by the App Store" which encourages users to "download apps freely and without care."

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Further Appeal

- While the Ninth Circuit's April 2023 decision reaffirmed Apple's resounding victory in the case, with 9 of 10 claims having been decided in Apple's favor, we respectfully disagree with the court's ruling on this one remaining claim under state law.
- On July 3, Apple said it wou[...] ourt to take up its appeal of the Ninth Circuit's ruling.

- While the Ninth Circuit's decision reaffirmed Apple's resounding victory in the case, with 9 of 10 claims having been decided in Apple's favor, we respectfully disagree with the court's ruling on this one remaining claim under California state law.
- In a court filing on July 3, Apple said it would ask the Supreme Court to take up its appeal of the Ninth Circuit's ruling.
- [Turn over to Carson]

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- As a result of this decision, beginning tomorrow, [July 7th], apps that offer in-app purchases for the sale of digital goods and services on the iOS or iPadOS App Store in the US will have the ability to include a link or button in app that direct users to alternative ways to buy outside of the app.

App Review Guideline Changes

3.1.1 In App Purchase

If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. Apps may not use their own mechanisms to unlock content or functionality, such as license keys, augmented reality markers, QR codes, etc. ~~Apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase.~~
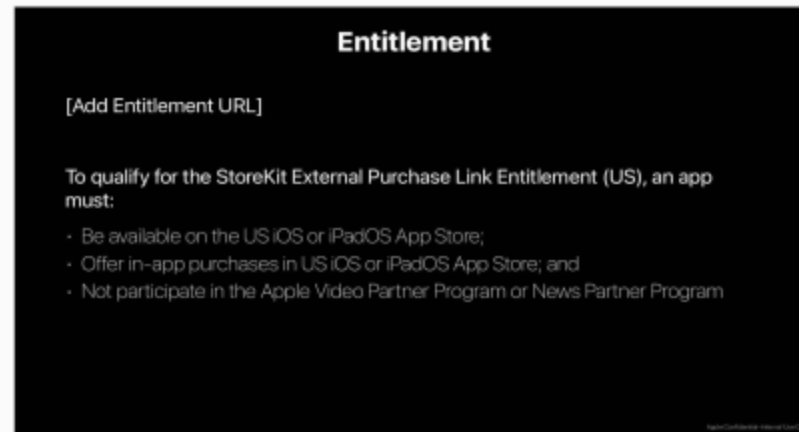
- To comply with this requirement, we've modified App Review Guideline 3.1.1 and removed the sentence that stated that "Apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase.
- We've also added Guidelines 3.1.1(a), which provides developers in the US the ability to provide a link in their app to a website that a developer owns or matins responsibility for in order to purchase."

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Updated App Review Guidelines

3.1.1 In App Purchase

If you want to unlock features or functionality within your app, (by way of example: subscriptions, in-game currencies, game levels, access to premium content, or unlocking a full version), you must use in-app purchase. Apps may not use their own mechanisms to unlock content or functionality, such as license keys, augmented reality marke...

3.1.1(a) Link out to Other P

"Developers may apply for the StoreKi... tlement Addendum for US Apps to provide a link in their app to a website ... ains responsibility for in order to purchase such items. In accordance with the StoreKit External Purchase Link Entitlement Addendum for US Apps agreement, the link may inform users about where and how to purchase those in-app purchase items, and the fact that such items may be available for a comparatively lower price. The StoreKit External Purchase Link Entitlement Addendum for US Apps is limited to use only in qualifying App Store storefronts. In all other storefronts, apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase."

- To comply with this requirement, we've modified App Review Guideline 3.1.1 and removed the sentence that stated that "Apps and their metadata may not include buttons, external links, or other calls to action that direct customers to purchasing mechanisms other than in-app purchase.
- We've also added Guideline 3.1.1(a), which provides developers in the US the ability to provide a link in their app to a website that a developer owns or matins responsibility for in order to purchase."
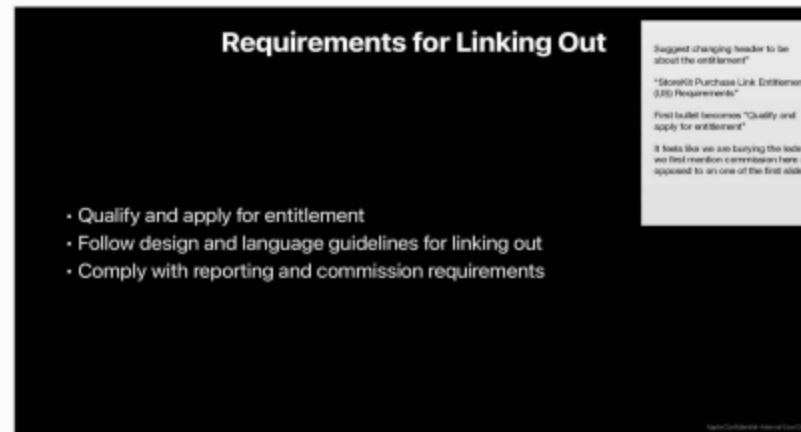
· In order for developers to add linking out to their app, their must (1) qualify for and apply for the StoreKit Purchase Link Entitlement in the US, (2) follow the design and language guidelines for linking out, and (3) comply with the reporting and commission requirements.

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Entitlement

[Add Entitlement URL]

To qualify for the StoreKit External Purchase Link Entitlement (US), an app must:

- Be available on the US iOS or iPadOS App Store;
- Offer in-app purchases in US iOS or iPadOS App Store; and
- Not participate in the Apple Video Partner Program or News Partner Program

- To qualify for the entitlement, an app much be available in the iOS or iPadOS App Store in the US, as well as offer Apple In-App Purchase, or IAP, through the US storefront
- In addition, apps must not be participants in the Apple Video Partner Program or News Partner Programs
- This application for this entitlement can be found at [URL]
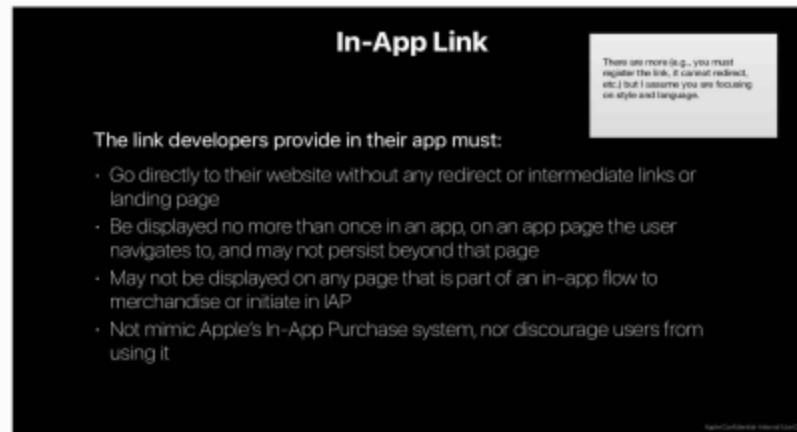
- Apple will require developers to adhere to certain requirements to qualify for and use the StoreKit External Purchase Link Entitlement (the "Link Entitlement"). These requirements serve a variety of purposes, but they all arise largely from the fact that External Purchase Links encourage users to leave the app and the App Store ecosystem, and undertake a transaction on the open Internet.
- These requirements are necessary to protect user privacy and security, avoid user confusion, and enable efficient review of developers' apps by App Review.
- The links developers provide in their app must:
  - Be a single URL, which must be included with their app and provided to App Review;
  - Go directly to their website via the default browser without any redirect or intermediate links or landing page;
  - Be displayed on no more than one page in an app, in a single dedicated location on such page, and may not persist beyond the page on which it is shown;
  - May not be displayed on any page that is part of an in-app flow to merchandise or initiate a purchase using in-app purchase.
  - May not mimic or discourage use of Apple's in-app purchase system
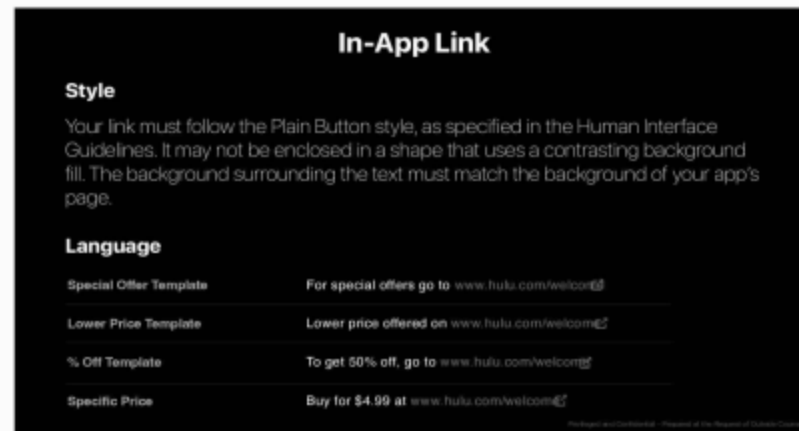
- Also, the link must adhere to Apple's design and language requirements, following the Plain Button style in the HIG and leveraging language templates for consistency for users

- Here are some examples of permissible in-app links

Commission

A reduced commission will apply to digital purchases facilitated through the StoreKit External Purchase Link Entitlement
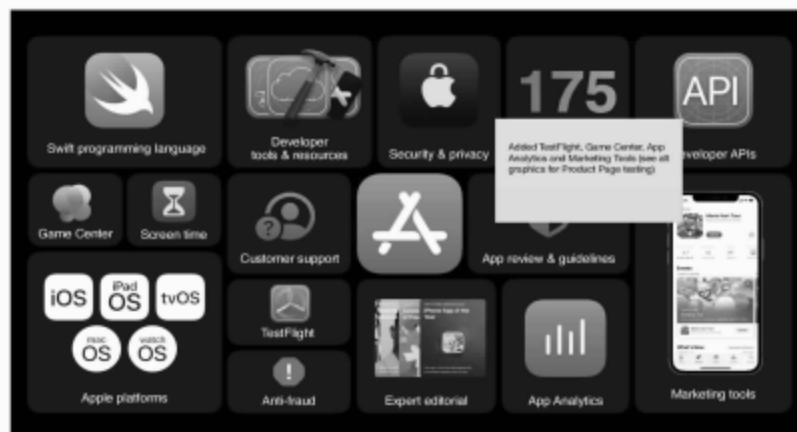
- 27% applied to transactions for digital goods and services initiated from the External Purchase Link within one week
- 12% for participants in the Small Business Program, or if the transaction is an auto-renewal in the second year or later of an auto-renewing subscription

- Apple will charge a reduced commission on certain out-of-app digital purchases. This includes a XX% commission on sales to the user for digital goods or services initiated within [timeframe], and a further reduced commission of YY% for participants in the Small Business Program or for auto-renewing subscriptions in their second year or beyond.
- The Court did not enjoin Apple's core business model of monetizing the App Store by charging a percentage commission rate on sales of digital goods and services facilitated by its platform. Instead, it found that "under all models, Apple would be entitled to a commission or licensing fee, even if IAP was optional."
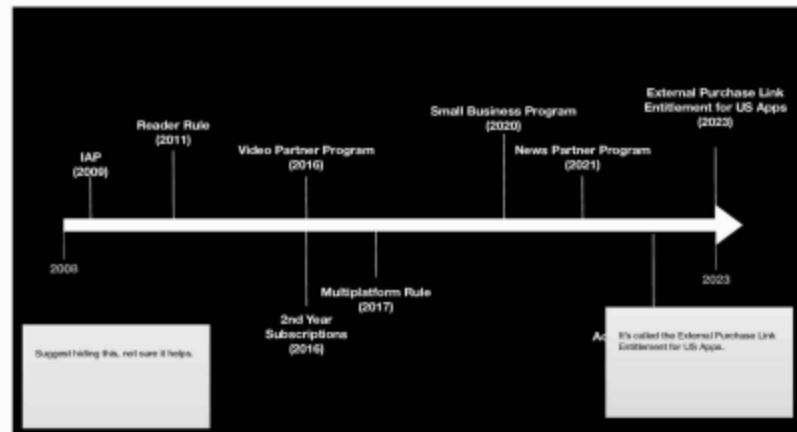- Apple's commission supports its continued investments in the App Store and it's developer ecosystem....

- This includes the tools we give developers to create incredible apps, to the secure distribution we provide that gets them safely into the hands of customers around the world.
- We offer and relentlessly improve a wide and growing range of technologies to help developers create their apps: from compilers, programming languages, operating systems, frameworks, APIs, testing tools, performance tools and more.
- We have teams in markets around the world who partner with developers to help them create apps and succeed on the App Store.
- We work hard to support developers because we know they have lots of other choices for distributing their apps and services – from app stores to smart TVs to gaming consoles to the open Internet.
- This entire experience gives our customers the confidence to download and buy from any app on the Store.

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- We've also continued to evolve the commission model of the App Store over the last 15 years based on the feedback from developers and users, as well as changes in the market. Over the years, we've only made our business model more flexible, such as the addition of Reader Rule in 2011 and the Mulitplatform Rule in 2017, as well as reducing our commission for developers, through the introduction for tenured subscriptions in 2016 and the Small Business Program in 2020.
- This new capability for developers is a continuation of process, which now allows developers to communicate and link out from within their app to alternative ways to buy outside of the app.

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- Almost 15 years ago, we introduced the App Store with just 500 apps. The App Store not only provided the ability for developers to build native apps on the iPhone; it also created a simple way for all developers to reach Apple users.
- **[CLICK]**
- In the 15 years since, the App Store ignited a cultural and economic phenomenon that's created new industries and changed how people work, play, travel and so much more.
- From the beginning, the App Store's two mains goals have been simple:

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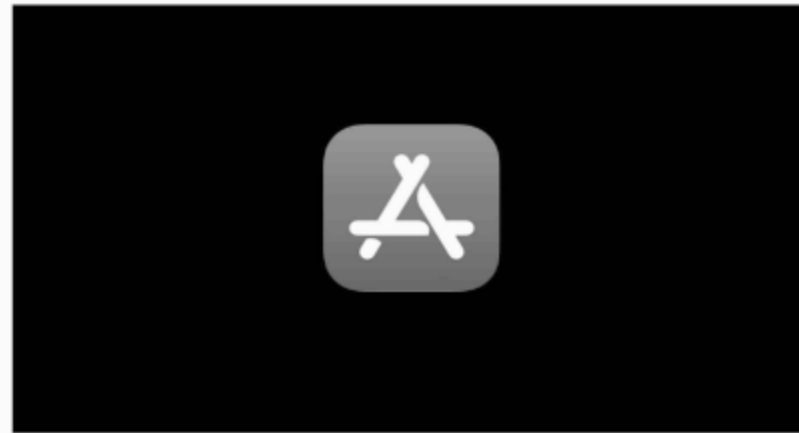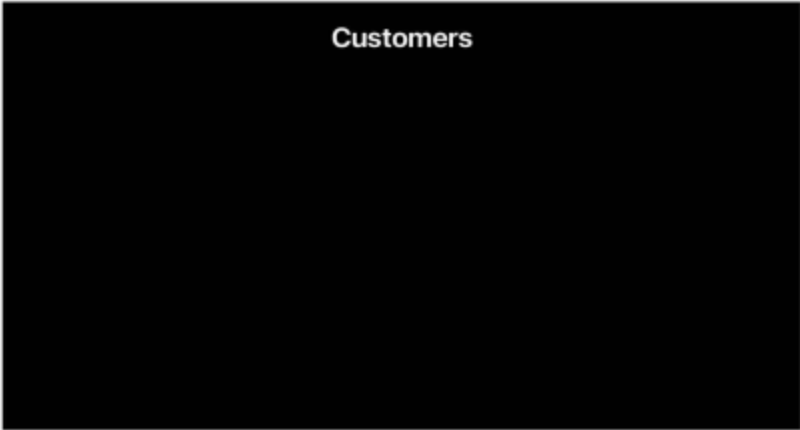
- To provide customers with a safe and trusted place for users to discover and download apps
- And to offer a great business opportunity for all developers.

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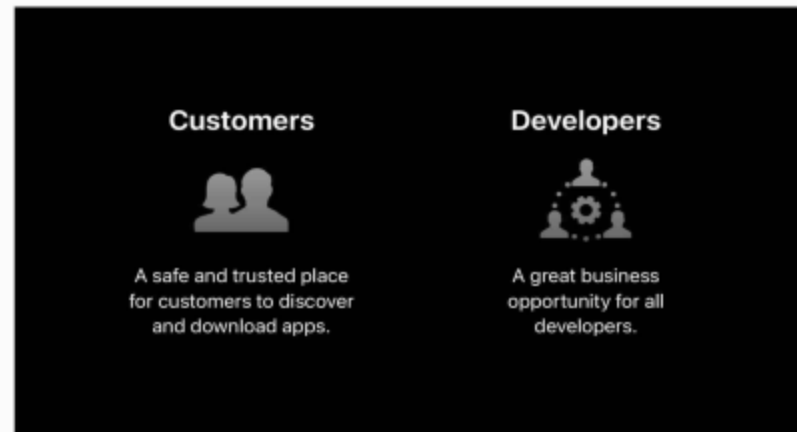
Customers

- To deliver on our customer promise, we built an App Store unlike any that came before.
- One that's available in users in 175 markets around the world.
- An App Store that made it incredibly easy for those users to explore, download, and buy apps.
- And an App Store that integrates user trust, safety and privacy into every facet of the experience.

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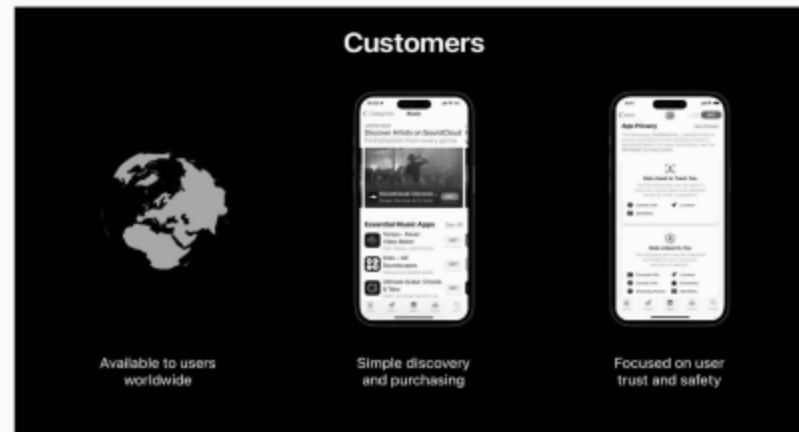
- A key element required to maintain this customer experience is our App Review Guidelines and the App Review team
- Since the beginning of the App Store, the App Review team reviews every app before it's released to users on the App Store, making sure the apps don't contain malware; have harmful, unsafe or illegal content; or impact device performance.
- The App Store Review Guidelines provide clear direction to developers on how build apps for iOS to comply with App Store rules.
- The Guidelines have been public since 2010, and they apply to all developers, **without exception**. We don't make exceptions for any developer, no matter how large or influential they may be.
- We also update the Guidelines from time to time so that we can protect customers from evolving fraud and safety concerns, and to make sure that the App Store remains a fair place for developers to do business. In doing so, we make sure to listen to developers to accommodate new business models, acknowledge changes in market dynamics, or to address concerns.

"The developer and us have the
same exact interest, which is to get as
many apps out in front of as many
iPhone users as possible."

Steve Jobs, MacWorld 2008

- Turning to developers, one of the key reasons why the App Store has worked so well is that, from the very beginning, Apple's success has been tied to the success of the developers that operate on the App Store.
- When Steve Jobs announced the App Store in 2008, he said that "the developer and us have the exact same interest, which is to get as many apps out in front of as many iPhone users as possible."
- To accomplish this goal, it's critical that we support the health and diversity of the app catalog available to users...

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Additional VO Points:

Thinking about the balance between Apple's autonomy and developers' access, we want you to understand our incentives for managing the App Store.
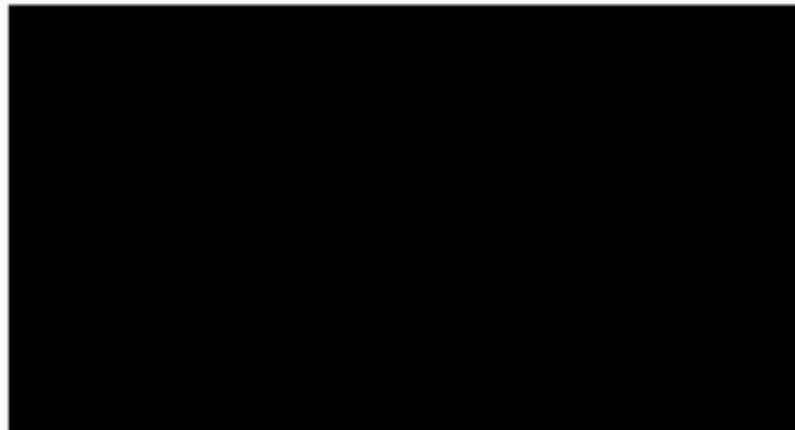
- This includes Apple's own apps, as well as third-party apps, because they collectively make our hardware products more attractive to consumers.
- Maintaining a robust app ecosystem drives the sale of our hardware products, which is Apple's core business. It also helps keep us competitive with Android.
- We have strong incentives to keep our ecosystem open to developers and to deliver choice and quality to our consumers. This is why we're deeply committed to continuing to foster and grow this ecosystem.

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Additional VO:

- We don't have any incentive to impede the success of third party apps with arbitrary or unfair rules. We have every reason to support developers.

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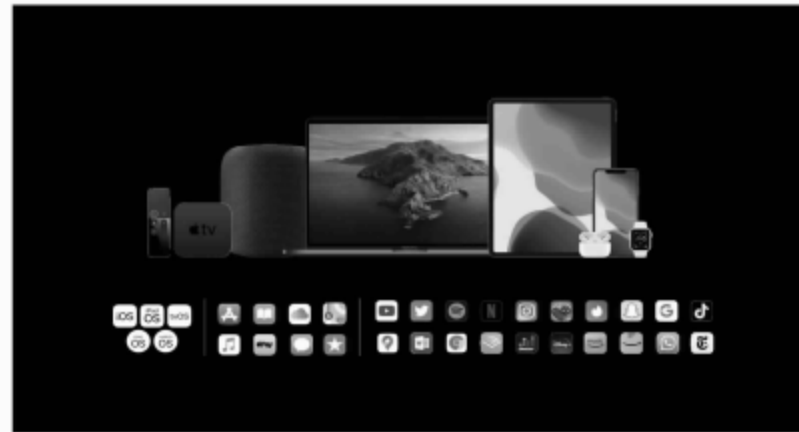
- In response, we introduced In-App Purchase, or IAP, in 2009. This enabled customers to download a single version of an app and then pay to unlock different content and functionality. This was a major benefit to users because it allowed them to experience new apps before committing to paying for additional features, functionality and content.

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- Since 2009, IAP has operated as Apple's centralized in-app payment system, one that provides a safe, simple, and secure way for consumers to make purchases of digital content, and that enables Apple to collect its commission.
- IAP also enables core App Store user features, such as centralized subscription management, purchase history, and "Ask to Buy."
- The latter feature allows families to provide kids the freedom to "ask to buy" an in-app item by sending a request to a parent or guardian for approval. This is just one example of how Apple leverages integrated technologies, like IAP, to create safer and more compelling experiences for its users.

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Additional VO:

- IAP is great, in particular for less well known developers without a strong brand, as it reduces friction by enabling one-click purchasing.

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Multiplatform Services Rule

"Apps that operate across multiple platforms may allow users to access content, subscriptions, or features they have acquired elsewhere, provided those items are also available as in-app purchases within the app."

App Store Review Guidelines, Multiplatform Services Rule

- Apple continued to build on this principle over time. In 2017, Apple introduced the Multiplatform Services Rule in its Guidelines. Similar to the Reader Rule, this change was based on feedback from developers - in this case, Microsoft for its game, Minecraft.
- The Multiplatform rule allows all developers to sell digital content outside the App Store and make that content available to users in their iOS app, so long as those items are also available for purchase in the app.
- This means that Apple receives no commission on content purchased out of the app, even when it's consumed within the app. We only receive a commission on the purchases made directly in the app.
- Many music streaming apps, like Deezer and YouTube Music, benefit hugely from the Multiplatform rule. Most of their subscribers are acquired outside the App Store, and they pay nothing for those users to download and use those apps through the App Store.
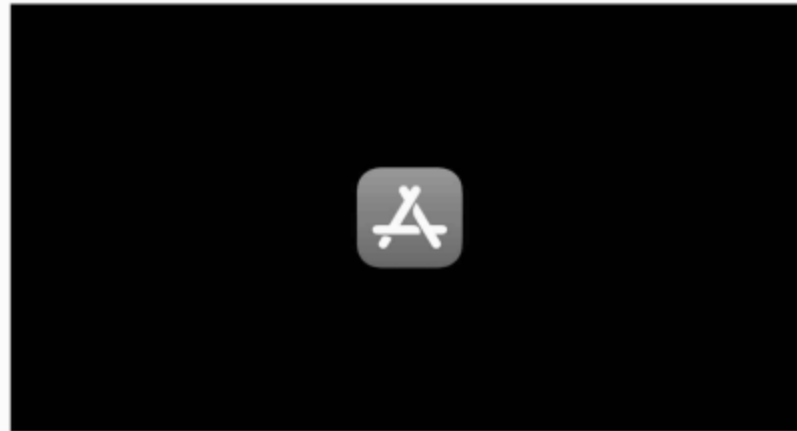
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[Ann]
Here's an example of the UI flow once a customer clicks on a link out button with the updated language.

It takes a customer to a system disclosure sheet letting them know they are leaving the app and going to the web.
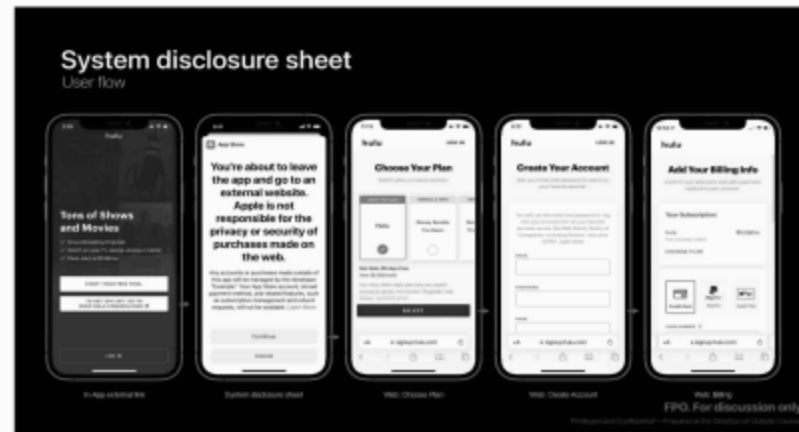
[Ann]
And here's how it could look for account-based products and services.

- Apple makes significant investments in the App Store to foster the growth of this ecosystem, from users features, like expert editorial curation, centralized subscription management and Family Sharing, to critical developer features like analytics tools, as well as advanced commerce and pricing capabilities.
- We have teams based in EU countries who partner with developers to help them build great apps and succeed on the App Store.
- We work hard to support developers because we know they have lots of other choices for distributing their apps – from other mobile app stores to smart TVs to gaming consoles to the open Internet.

––––– –––––

–Countries
–Languages
–Local currencies
–Stories
–Expert editors
–App Review
–TestFlight
–Xcode Cloud
–In-app purchases
–Subscriptions
–AppleCare Support
–Privacy
–Safe & Secure Payments
–Frameworks & APIs
–Family Sharing

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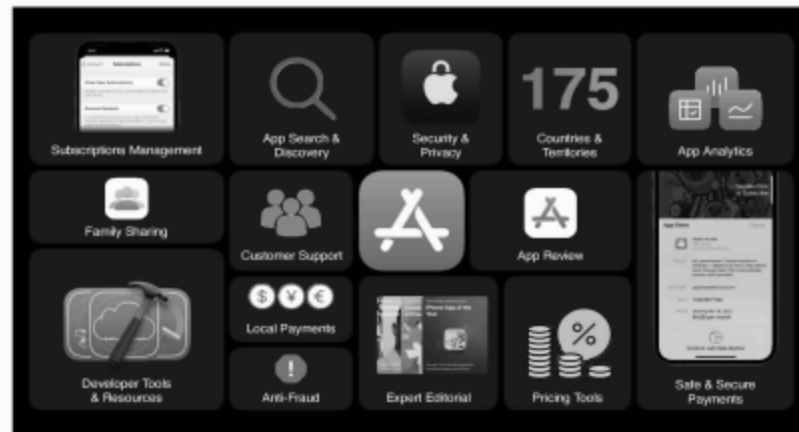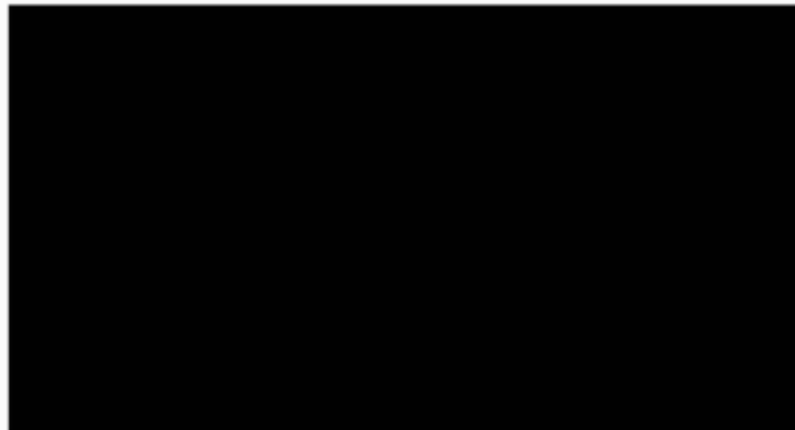
- But Apple offers developers more than just a store. It's an end-to-end technology platform that enables developers to easily build and deliver native app experiences.
- Since we released the iOS SDK in 2008, Apple has developed and released foundational tools and technologies, like Xcode, Swift, and TestFlight, which allow developers to design, code, and test their apps.
- And every year for the past 15 years, we've introduced new APIs, frameworks and tools that are designed to help developers take their app experiences further and attract more users, from FaceID to SharePlay.
- The technologies and features we've created for developers require years of dedicated engineering work and testing before they are ready for developers to use in their apps. Apple has invested billions in supporting developers, enabling developers to access incredible technologies, like Siri or the camera, and to do so without worrying that their apps will break or otherwise suffer degraded performance.
- One of the ways that Apple funds these significant investments is through it's App Store business model, a commission on the sale of digital goods and services....

Additional VO:

- We offer and relentlessly improve on a wide and growing range of technologies to help developers build cutting-edge technologies into their apps: from compilers to programming languages, to operating systems and testing tools, to frameworks and APIs, and much more.

- This basic business model has existed since the beginning of the App Store.
- From day 1, Apple decided to apply the commission only to the sale of paid digital software because it's where we believed the App Store could add the most value – where we could help manage the experience in how that content was delivered and consumed on its devices.
- Likewise, Apple introduced the 30% commission from the beginning to cover its investments. 30% was substantially less than what developers were charged for software distribution at the time, which was often a 50-70% cut taken by retailers.
- It was our goal to bring developers to our platform, so we set the commission lower than anyone else before.
- And for developers that distributed free apps, or relied on different business models, like advertising or the sale of physical goods or services, we charged no commission at all, ensuring that we'd get as many apps on the store as possible.

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Control Number	APL-EG_11395152
Group Identifier	APL-EG_11395152
P/C	
FamilyStatus	
AllCustodians	
Email From	
Email To	
Email CC	
Email BCC	
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TimeSent	
DateLastModified	7/10/2023
TimeLastModified	15:43:04
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Confidentiality_Rcvd	CONFIDENTIAL
Production Vol.	APL-EG_104